



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

Morningstar Foods, Inc.
Registration #: 81100

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Morningstar Foods, Inc., for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order, and incorporates the additional terms and conditions as set out in Appendix A to this document.
6. "Morningstar" means Morningstar Foods, Inc., a company authorized to conduct business in the Commonwealth of Virginia.

7. “Facility” means Morningstar’s dairy product manufacturing facility located at 6364 South Valley Pike, Mt. Crawford, Virginia.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

SECTION C: Findings of Facts and Conclusions of Law

1. DEQ issued a Notice of Violation (NOV) to Morningstar on August 11, 2005 for apparent violations of State Air Pollution Control Law and regulations occurring at Morningstar’s facility located in Mt. Crawford, Virginia. The NOV listed the following apparent violations of Morningstar’s New Source Review (NSR) permit, dated June 20, 1997 and amended on February 6, 2003.
 - a. Morningstar has installed and placed into operation a boiler unit without first obtaining the requisite permit, in violation of Permit Condition 1, 9 VAC 5-50-390, and 9 VAC 5-80-1210D.
 - b. Morningstar also commenced construction on two additional boilers, not yet put into production, in violation of Permit Condition 1, 9 VAC 5-50-390, and 9 VAC 5-80-1210D.
2. 9 VAC 5-50-390 provides:

A permit may be required prior to beginning any of the activities specified below if the provisions of this chapter and 9VAC5 Chapter 80 (9VAC5-80) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. ... 3. Modification (any physical change to equipment) of a facility.
3. 9 VAC 5-80-1210D provides:

Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.
4. Upon review of Morningstar’s 3rd Quarter 2004 Fuel Certification Report, a DEQ inspector telephoned Ken Casto of Morningstar on October 18, 2004, with instructions to submit a permit application for a third, unpermitted boiler. Mr. Casto was told to expect enforcement action from DEQ for failing to apply for and secure the required permit. On October 19, 2004, a DEQ inspector visited the Morningstar facility with Willis Brown of

Morningstar present. The inspection report documents the presence of the third, unpermitted boiler and Morningstar's intention to add one or two additional boilers within the next year. It also documents that Morningstar needed a permit for the new boiler, that Mr. Brown was preparing a permit application, and that enforcement action from DEQ would follow. This inspection report, marked Out of Compliance, was mailed to Mr. Brown under a DEQ cover letter dated November 4, 2004.

5. On October 28, 2004, a DEQ permit writer visited Morningstar to evaluate the existing equipment and to provide assistance with the permit application. With the permit application still outstanding, a DEQ inspector called Mr. Brown on March 28, March 31, and April 8, 2005, to inquire about its submittal. A separate call regarding the permit application was placed to Mr. Dean Strobel on April 8, 2005. DEQ received a "draft" permit application with no responsible official signature on April 11, 2005. On April 15, 2005, a DEQ permit writer met with Willis Brown to review "draft" permit application and request additional information. DEQ received a deficient permit application on April 19, 2005. A DEQ permit writer sent an application deficiency letter to Mr. Strobel on May 4, 2005. After reviewing supplemental information submitted by Morningstar on May 26, 2005, a second application deficiency letter was sent to Mr. Brown on July 19, 2005. Supplemental information was submitted by Morningstar on August 4, 2005. Upon receiving sufficient information to evaluate Morningstar's application, a Notice of Violation was issued on August 11, 2005, followed by Morningstar's New Source Review permit on August 25, 2005.
6. DEQ officials met with Morningstar representatives on August 31, 2005 to discuss the matter and agreed in principle to corrective actions. Morningstar has completed applications for securing the proper permits for adding the additional boilers. No additional corrective action was deemed necessary, whereas the facility is operating within it permitted limits and the operation of the newly installed boiler does not create any unpermitted discharge of pollutants.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Morningstar, and Morningstar voluntarily agrees to pay a civil charge of **\$11,500.00**.

1. **\$3,000.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Morningstar's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to **"Treasurer of the Commonwealth of Virginia"** and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

2. **\$8,500.00** of this civil charge shall be satisfied upon completion by Morningstar of a Supplemental Environmental Project (SEP) pursuant to Va. Code § 10.1-1186.2, as described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Morningstar, for good cause shown by Morningstar, or on its own motion after notice to Morningstar and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Morningstar admits to the allegations in Section C of this Order.
4. Morningstar consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Morningstar declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of Morningstar to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Morningstar to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Morningstar shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Morningstar shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Morningstar shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may

delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Morningstar intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Morningstar. Notwithstanding the foregoing, Morningstar agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Morningstar petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Morningstar.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Morningstar from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Morningstar voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 30 Nov, 2005.

R. Bradley Churning
Robert G. Burnley
Department of Environmental Quality

Morningstar voluntarily agrees to the issuance of this Order.

By: Dean H. Strobel
Date: 11/17/05

Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this 17 day of
November, 2005, by Dean Strobel, who is
(name)

Plant Manager of Morningstar, on behalf of Morningstar
(title)

Jimmy D. Heflett
Notary Public

My commission expires: 11/30/07

APPENDIX A

Supplemental Environmental Project (SEP)

1. The Supplemental Environmental Project to be performed by Morningstar is to provide Level-A Entry Suits (for hazardous material response and cleanup), training suits, and related training to the Rockingham County Fire and Rescue organization. Morningstar has demonstrated to the Department that there exists an immediate need for such equipment and training in Rockingham County. Morningstar and the Department gave consideration to the following factors in agreeing to this SEP:
 - a) Several manufacturing facilities, including Morningstar, utilize very large quantities of anhydrous ammonia as part of extensive refrigeration systems in and around Rockingham County.
 - b) Rockingham County Fire and Rescue is presently not fully equipped to adequately respond in the event of a significant release.
 - c) The release of ammonia or other hazardous chemicals or compounds could detrimentally impact both air and water, as well as human health, in the immediate area.
 - d) Providing response suits and training, and partnering with local response teams on evacuation and mock drills is an innovative use of funds made available by the issuance of the civil charge associated with this Order.
 - e) Many low income residents of Rockingham County live in close proximity to the industrialized areas that maintain large amounts of ammonia or other hazardous chemicals.
 - f) Improving response time in the event of a release will result in minimizing the chance of exposure to workers and area residents and may result in pollution prevention impacts on air and water media.
2. The cost of the SEP to Morningstar shall not be less than \$8,500.00. In the event that the final cost of the SEP is less than this amount, Morningstar shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department of Environmental Quality (Department).
3. Morningstar acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Morningstar to a third party, shall not relieve Morningstar of its responsibility to complete the SEP as contained in this Order.
4. The SEP shall be completed by December 31, 2005. Extension of this date lies within the sole discretion of the Department.
5. Morningstar shall provide the Department with verification of completion or progress reports of the SEP. The project completion verification must be submitted to the Department within 15 days of the SEP's completion.

6. Morningstar shall submit verification to the Department in the form of expenditure receipts setting out the final overall cost of the SEP within 30 days of the project completion date.
7. In the event that Morningstar publicizes the SEP or the results of the SEP, Morningstar shall state in a prominent manner the project is part of a settlement for an enforcement action.
8. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.